

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1261 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SULEMAN YUSUF BHAIYAT

Appearance:

MR SP DAVE, LD. APP for Petitioner

MR JB DASTOOR, LA. for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/03/98

ORAL JUDGEMENT

1. This appeal has been filed by the State against the impugned judgment and order dated 1/9/1986 rendered by the learned Judicial Magistrate First Class, Ankleshwar in Criminal Case No. 2843 of 1985 whereby the respondent (referred to as 'the accused' herein) has been convicted of the offence punishable u/S. 326 of the Indian Penal Code (for short 'IPC') and section 135 of

the Bombay Police Act and sentenced to suffer R.I. for one month and to pay fine of Rs.500/- in default R.I. for 5 days.

2. The State has been aggrieved in respect of the sentence imposed by the learned Magistrate and it seeks to get the sentence enhanced at the hands of this Court.

3. The facts of the prosecution case indicate that on 11/10/1985 at about 10.30 O'clock in the morning the accused assaulted one Gulamhusen Suleman with a seythe (Dhariya) and caused injury to the complainant Gulamhusen Suleman. The injuries were caused to the legs and to the cheek of the complainant. It appears that the complainant has asserted in his cross-examination that the accused was of tender age and was not residing in the village at the time of the complainant's evidence. After such evidence was recorded the accused gave pursis exh. 8 admitting his guilt. Under such circumstances the learned Magistrate bearing in mind the tender age of the accused (less than 20 years) imposed light sentence of one month as aforesaid.

4. I have heard the learned A.P.P. for the appellant-State and Mr. J.B. Dastoor, learned advocate appointed to assist the accused.

5. It is not in dispute that at the time when the evidence of the complainant was recorded the accused was of tender age, namely of less than 20 years. It is also not in dispute that the complainant was not examined any further in view of his admissions about the age of the accused. It finally appears from the evidence of the complainant that the accused was also not residing in the village in which the incident had taken place. The learned Magistrate had taken into consideration all these circumstances. Besides, the appeal is of 1985 and nearly 12 to 13 years have passed since the sentence was imposed. No useful purpose will be served in passing the order of enhancement as prayed for in this appeal. Hence, bearing in mind the facts and circumstances of the case, this appeal will have to be dismissed. Order accordingly.

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**PVR88 cr.a126186j.